



# Focus on Cost Reimbursement

## Water Resources

### Expediting decisions on water right applications: The Cost Reimbursement option

A substantial backlog exists for water right applications in Washington State. The Department of Ecology (Ecology) has limited staff to review these applications and, as competition for water increases in the face of additional growth, the complexity of the decision-making has increased. Thousands of applications have been pending for many years – some for more than a decade.

In 2000, the state Legislature created a new alternative (RCW 43.21A.690 and RCW 90.03.265) for any applicant to expedite the decision-making on his or her application. This is the Cost Reimbursement option.

#### What is Cost Reimbursement?

Cost Reimbursement refers to a contract between a water-right applicant and Ecology under which the applicant agrees to reimburse the state for the cost of hiring a private consultant to evaluate their water-right application plus any senior (in line ahead) applications for the same source of water.

The Cost Reimbursement option enables a private consultant to do the work that Ecology hydrogeologists and permit writers would ordinarily do. This helps free up Ecology staff to work with other applicants and reduce the water rights application backlog.

Ecology retains the authority to render a final decision on the application, but the consultant conducts a site investigation, performs the environmental and hydrogeologic analyses, identifies whether the water is available or would impair other water users, prepares a report with his or her findings and a recommendation whether to approve the application.

#### What are the advantages of Cost Reimbursement?

Cost Reimbursement generally results in a quicker decision because a consulting firm is being contracted to dedicate its resources to the investigation of a particular application. Under the cost reimbursement option, a decision may be obtained within a matter of months rather than a matter of years. The time will vary according to the complexity of the proposal and the number of competing applications that must be addressed.

#### What are the disadvantages of Cost Reimbursement?

For an applicant, the key disadvantage is cost. The cost may be beyond the ability of many applicants to pay. An applicant who opts to wait for Ecology to process his or her application pays only \$50 per application. The actual costs of processing an application are significantly greater, but those additional costs are paid out of the

#### THE COST REIMBURSEMENT PROCESS

Applicant signs Cost Reimbursement Agreement.



##### Phase One

Identify competing applicants.

Define the boundaries of the water source

Make Initial assessment of water right issues.

Develop Phase Two scope and budget.



##### Phase Two

Consultant analyzes issues of water availability and the potential for impairment to other users.

Consultant prepares Reports of Examination.



Ecology approves or denies application.



agency's own budget, using tax dollars. No application fee is required if a party enters into a Cost Reimbursement Agreement.

An applicant who enters a Cost Reimbursement Agreement is expected to pay the full cost of processing the application, and other competing applications – including the cost it takes to hire a consulting firm. In addition to the contracting costs, the applicant is expected to pay the costs of Ecology staff time spent reviewing the work of the consultant and managing the contract.

### **How much does the Cost Reimbursement process cost?**

The costs can range from a few thousand dollars to, in exceptional cases, hundreds of thousands of dollars. The cost will vary according the number and complexity of applications, the fees charged by the consultant and the number of hours that Ecology must spend reviewing the work of the consultant (Ecology's costs are reimbursable, too).

### **Does entering into a Cost Reimbursement Agreement allow an applicant to jump to the head of the line?**

No. Ecology must process applications for the same source of water in the order they are received. This means that an applicant who enters into a Cost Reimbursement Agreement must also pay for the processing of prior, or senior, applications. The number of senior applicants, and the nature of their proposals, is a key factor affecting the cost of a cost reimbursement agreement.

### **Why do Cost Reimbursement applicants have to pay for the processing of senior applications?**

The law requires it (RCW 90.03.265). Prior applicants for the same source of water retain the right to have their applications processed first. Applicants are encouraged to explore opportunities for cost-sharing.

### **How does Ecology determine which other applications have to be addressed?**

It is up to both Ecology and the consultant to identify the boundaries of the source of water. This is the area that could be affected by a proposed water withdrawal. The consultant and Ecology also will evaluate whether there are prior applications to this same source of water. In the case of groundwater applications, this requires the consultant to engage in a preliminary delineation of the affected aquifer. It may also require making some tentative assessments of the extent to which groundwater and surface water sources might be connected.

### **How do I initiate the Cost Reimbursement process?**

Ecology recommends that any applicant considering the Cost Reimbursement process first consult with Ecology regional staff. Regional staff will be able to give an applicant an idea of how many other applications are in the same watershed, share its knowledge of watershed issues and provide its initial impression of the viability of an application. Ecology also will be able to discuss what type of costs the applicant is expected to pay, such as:

- Consultant services
- Ecology time spent reviewing the consultant's work and managing the contract
- Certain legal costs

## ***Phase One***

If the applicant is fully committed to the process, he or she may formally request Ecology to enter into a Cost Reimbursement Agreement. Ecology will choose a consulting firm from a pre-approved list, ensure it has no conflicts of interest, and ask that firm to submit a proposal and estimate for performing a “**Phase One**” analysis.

If the costs are deemed prohibitive, the applicant may choose not to pursue the process any further. If the applicant accepts the proposal, however, a written contract is developed and the consultant is assigned the task of performing a Phase One analysis.

A Phase One analysis typically costs between \$5,000 and \$10,000. There are several payment options: Full Prepayment, Deposits, Posting a Bond.

A Phase One analysis is a preliminary report by the consultant to identify senior applicants competing for the same water source. A Phase One analysis also will identify likely issues that require further evaluation, and will provide a scope and estimate of costs for completing “Phase Two” of the evaluation.

Following the Phase One analysis, an applicant once again has the option to pursue the process no further.

## ***Phase Two***

Next is the **Phase Two** analysis – the preparation by a consultant of a Report of Examination for each application under review. These are technical reports which investigate the issues of water availability and the potential for impairment to other water right holders.

It is important for applicants to understand that consultants are permitted to do only what it is provided for in their contracts as approved by Ecology. And applicants are expected to fully pay for those costs. To gather important data about the effects of a proposed withdrawal, the consultant may find it necessary to drill test wells and perform pump tests. This could add to the costs significantly.

In addition, as the investigation of a particular water right application proceeds, new issues may arise that were not identified during the initial scoping process. In such cases, it may be necessary to develop amendments to the existing agreement to expand the scope, increase the budget or extend deadlines

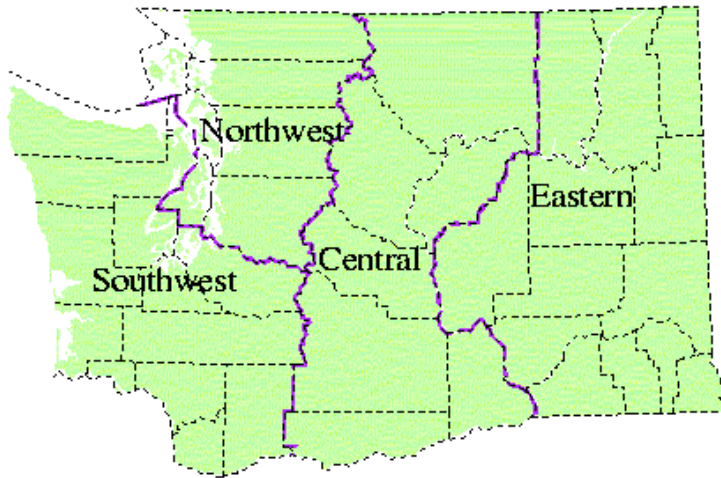
### **Does entering a Cost Reimbursement Agreement automatically mean my application will be approved?**

No. A Cost Reimbursement Agreement only ensures that a decision will be made. That decision could be approval or denial of the application(s).

### **Can I appeal a decision on my water-right application? Who pays for the appeal?**

An applicant may appeal a decision if he or she disagrees. In such cases, the applicant is responsible for paying for the legal costs of his or her own appeal. Ecology’s decisions on water rights are defended by the state Attorney General Office. If a third party appeals a decision, the applicant may be responsible for reimbursing the state for the cost of defending the decision before the Pollution Control Hearings Board (PCHB). Ecology may negotiate further reimbursement if the decision is appealed beyond the PCHB.

**Whom should I contact if I'm interested in a Cost Reimbursement Agreement or just want to learn more?**



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